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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,359	04/01/2004	Erich C. Vierkant III	550299.94186	9791

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EXAMINER

HUYNH, KHOA D

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/816,359

Applicant(s)

VIERKANT ET AL.

Examiner

Khoa D. Huynh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 10 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/1/04, 11/29/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species I (as depicted in Figs. 2-5) in the reply filed on 02/27/06 is acknowledged.

Applicant, in the reply, indicates that claims 1-13 are readable on the elected species. Nevertheless, upon further consideration, it is believed that claims 1-9, 12 and 13 are readable on the elected Species I. Claims 10 and 11 are not readable on the elected species. According, claims 10 and 11 are withdrawn from further consideration as being drawn to the non-elected invention.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: an essentially horizontally extending deflectable extension arm as recited in claim 1.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-9, 12 and 13 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the use of two extension arms (56 and 57), does not reasonably provide enablement for use of an extension arm (56 or 57) for attaching the toilet cover to the rear portion of the toilet base. As understood

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from the instant specification, applicant discloses an assembly for mounting a (toilet) cover to a toilet base, i.e. the toilet bowl's rear portion. The assembly includes two extension arms (56 and 57) which are used for attaching the cover to the toilet base. Applicant, in the instant disclosure, does not disclose or shown that the cover could be attached to the toilet base by using the assembly having just one extension arm as claimed in the claims. Such lack of support in the instant disclosure does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make/use the invention commensurate in scope with these claims.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-9, 12 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "can be" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. Claims 2-9, 12 and 13 depend on claim 1 and are likewise indefinite.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-4, 7, 12 and 13 as presently understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Bly (5341571).

Regarding claims 1 and 13, the Bly reference discloses an assembly for mounting a cover (32) to a toilet base (Fig. 4). The assembly includes a fastener (at 22) extendable through a rear portion of the toilet base (constitute by the frame portion as schematically shown in Figures 1 and 2), a base member (at 48 in Figure 6) adapted to support the cover (32) in pivotal fashion. The base member includes two essentially horizontally extending deflectable extension arms (elements 76 & 78 constitute each arm) each defining in part an opening (84) for receiving the fastener. As schematically shown in Figure 6, the base member is slidably connected to and disconnected from the fastener by deflection on the extension arms so that the base member is capable of being removably attached to the toilet base.

Regarding claim 2, each of the arms has an inwardly facing catch surface.

Regarding claim 3, the base member (48) has two such extension arms (each of elements 74 as schematically shown in Figure 6) are arranged spaced apart on each side of the opening (84).

Regarding claims 4 and 7, the assembly also includes a cover (constitute by the arcuate element that bridges elements 74 as shown in Fig. 6) capable of restricting outward deflection of the arm when in a closed or engaged position. Also, the cover is positively engages the arms (Fig. 6).

Regarding claim 12, the cover (32) is a toilet cover.

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9. Claims 1, 2, 4, 7, 8, 12 and 13 as presently understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Bly (5341517).

Regarding claims 1 and 13, the Bly reference discloses an assembly for mounting a cover (30') to a toilet base (Fig. 4). The assembly includes a fastener (at 22') extendable through a rear portion of the toilet base (constituted by the frame portion as schematically shown in Figures 1 and 2), a base member (at 44' in Figure 7A) adapted to support the cover (30') in pivotal fashion. The base member includes two essentially horizontally extending deflectable extension arms (elements 60' & 62' constitute each arm) each defining in part an opening (68') for receiving the fastener. As schematically shown in Figure 7A, the base member is slidably connected to and disconnected from the fastener by deflection on the extension arms so that the base member is capable of being removably attached to the toilet base.

Regarding claim 2, each of the arms has an inwardly facing catch surface.

Regarding claims 4 and 7, the assembly also includes a cover (90) capable of restricting outward deflection of the arm when in a closed or engaged position. Also, the cover positively engages the arms (Fig. 7A).

Regarding claim 8, the assembly also includes a ring mount (90) disposed about the fastener engageable with the extension arm (Fig. 7A).

Regarding claim 12, the cover (30) is a toilet seat.

10. Claims 1-9, 12 and 13, as presently understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Moser (6381762).

Regarding claims 1 and 13, the Moser reference discloses an assembly for mounting a cover (32) to a toilet base. The assembly includes a fastener (at 12a or 12b) extendable through a rear portion of the toilet base (16), a base member (at 20 in Figures 2 and 3) adapted to support the cover (32) in pivotal fashion. The base member includes two essentially horizontally extending deflectable extension arms (about 22 and 24 in Fig. 2) each defining in part an opening (about 25 or 23 in Fig. 3) for receiving the fastener. As schematically shown in Figure 2, the base member is slidably connected to and disconnected from the fastener by deflection on the extension arms so that the base member is capable of being removably attached to the toilet base.

Regarding claim 2, each of the arms has an inwardly facing catch surface.

Regarding claim 3, the base member (at 20) has two such extension arms (each of elements 66b or 66a as schematically shown in Figure 3) are arranged spaced apart on each side of the opening (25 or 23 in Fig. 3).

Regarding claims 4 and 7, the assembly also includes a cover (constitute outer portions labeled as 48,72 in Fig. 3) capable of restricting outward deflection of the arm when in a closed or engaged position. Also, the cover is positively engages the arms (Fig. 6).

Regarding claims 5 and 6, cover (about 48) is hinged or linked to the base member via a living hinged (about 82 in Fig. 1).

Regarding claim 8, a ring mount (42a or 42b) disposed about the fastener engageable with the extension arm.

Regarding claim 9, the fastener includes a bolt (Fig. 5) extendable through the opening in the base member and a hole in the rear extension (Fig. 4) of the toilet base, wherein the assembly further includes a nut (38a or 38b).

Regarding claim 12, the cover (32) is a toilet cover.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'Khoa D. Huynh', with a horizontal line underneath.

Khoa D. Huynh
Primary Examiner
Art Unit 3751

HK
03/06/2006